



Comptroller General
of the United States

156159

Washington, D.C. 20548

Decision

Matter of: Kurz & Root Generator and Electric Co., Inc.

File: B-265954

Date: September 15, 1995

DECISION

Kurz & Root Generator and Electric Co., Inc. protests an award to B.F. Systems, Inc. under invitation for bids (IFB) No. DAAK01-95-B-0033 issued by the Department of the Army, Aviation & Troop Command, for rotor assemblies for use on electric generators. Kurz & Root alleges that its bid was unreasonably eliminated from consideration for award and that B.F. Systems should not be considered eligible for award.

We dismiss the protest as untimely because it was filed more than 10 days after the protester knew, or should have known, of the basis for its protest.

The Army received three bids for bid opening on April 18, 1995. The lowest bid was submitted by "K & R Generator Co., Inc.," which was subsequently (after bid opening) purchased by MC II Generator & Electric Service and renamed Kurz & Root. B.F. Systems submitted the second low bid and MC II submitted the third low bid. The agency conducted a pre-award survey of K & R Generators, determined that the bidder was nonresponsive, and so advised K & R Generators. On June 20, 1995, Kurz & Root contacted the agency stating that MC II had purchased the firm and installed a new management team, and requesting that a second pre-award survey be conducted.


The protester states that, on June 27, the Army called Kurz & Root stating that the Army would proceed with award to the second low bidder. The Army awarded the contract to B.F. Systems on July 26.¹ Kurz & Root filed its protest on September 1.

¹The Army published notice of the award in the Commerce Business Daily (CBD) on August 17. The Army also sent a letter to the protester, dated August 14, notifying the protester of award. Kurz & Root received this letter on August 19.

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Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Under these rules protests not based upon alleged improprieties in a solicitation must be filed no later than 10 working days after the protester knew, or should have known, of the basis for the protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1995). In this regard, a protester's receipt of oral information forming the basis of its protest is sufficient to start the 10 day time period; written notification is not required. Swafford Indus., B-238055, Mar. 12, 1990, 90-1 CPD ¶ 268. Here, the Army's call to the protester on June 27 informed Kurz & Root that the Army would proceed with award to B.F. Systems, and thus the protester also necessarily should have known that the agency would not reconsider its determination that Kurz & Root was not a responsible bidder and that it intended to make award to B.F. Systems. Since Kurz & Root did not protest either its nonresponsibility determination or B.F. Systems's eligibility until over two months after receiving this call, the protest is untimely. Id. Moreover, our Office does not review protests of an agency's affirmative determination of responsibility, except in circumstances not present here. 4 C.F.R. § 21.3(m)(5).

The protest is dismissed.


James A. Spangenberg
Assistant General Counsel